

State Comments Regarding Definitional Alternatives in Survey  
Marketplace Facilitator Work Group  
September 18, 2018

**“Marketplace”**

1.\_\_\_\_ A physical or electronic place, including, but not limited to, a store, a booth, an Internet web site, a catalog or a dedicated sales software application, where tangible personal property or taxable services are offered for sale. (example from Connecticut’s definition of “forum”; see New Jersey and Oklahoma definitions of “forum”)

PA comment: Like the formal inclusion of ‘taxable services.’ If the definition of ‘tangible personal property’ does not include digital property, it should also be separately stated in the definition.

2.\_\_\_\_ Any physical or electronic means through which one (1) or more retailers may advertise and sell or lease tangible personal property or digital property, such as a catalog, Internet Web site, or television or radio broadcast, regardless of whether the tangible personal property, digital property, or retailer is physically present in this state. (example from Kentucky definition; see also definition in latest draft of MTC Model Use Tax Reporting Statute)

3.\_\_\_\_ Any means by which any marketplace seller sells or offers for sale tangible personal property, products transferred electronically, or services for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state. (example from South Dakota definition)

LA comment: add language to the effect: regardless of whether the marketplace, the marketplace facilitator, or the marketplace seller is physically present in the state.

4.\_\_\_\_ Other: [insert suggested language; if taken from existing statutory language, please provide the source]

MN suggested language: “A retailer is represented by a marketplace provider in this state if the retailer makes sales in this state facilitated by a marketplace provider that maintains a place of business in this state.” Minn. Stat. § 297A.66, subd. 1(a)(2).

“(c) ‘Marketplace provider’ means any person who facilitates a retail sale by a retailer by:

(1) listing or advertising for sale by the retailer in any forum, tangible personal property, services, or digital goods that are subject to tax under this chapter; and

(2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the retailer regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.” Minn. Stat. § 297A.66, subd. 1(c).

WA suggested language: A physical or electronic place, including, but not limited to, a store, a booth, an Internet web site, a catalog or a dedicated sales software application, where tangible personal property, digital codes and digital products, or taxable services are offered for sale. [Using Connecticut definition of “forum” but clarifying that we digital codes and digital products are included in the definition.]

### **"Marketplace seller"**

1.\_\_\_\_ Any person who has an agreement with a marketplace facilitator regarding retail sales of such person, whether or not such person is required to obtain a permit . . . .  
(example from Connecticut definition)

2.\_\_\_\_ A person that has an agreement with a marketplace facilitator and makes retail sales of tangible personal property or digital property through a marketplace. (example from Kentucky definition of “marketplace retailer”)

3.\_\_\_\_ A retailer is represented by a marketplace provider in this state if the retailer makes sales in this state facilitated by a marketplace provider that maintains a place of business in this state. (example from Minnesota defining marketplace seller as included in definition of “retailer”)

PA comment: no need to limit to marketplace provider (“facilitator”) that has a ‘place of business in this state.’ Recommend this phrase’s removal. Our suggested wording (overall) would be:

A retailer is represented by a marketplace provider in this state if the retailer makes sales in this state facilitated by a marketplace provider that maintains a place of business in this state.

4.\_\_\_\_ Other [insert suggested language; if taken from existing statutory language, please provide the source]

IA suggested language: “A seller that makes retail sales through any physical or electronic marketplace owned, operated, or controlled by a marketplace facilitator, even if such seller would not have been required to collect and remit sales and use tax had the sale not been made through such marketplace.” Iowa Code section 423.14A(1)(c) (from Senate File 2417, 87th G.A.).

LA comment: Iowa’s statutory definition .

AL suggested language: Ala. Act No. 2018 539 – “MARKETPLACE SELLER. A seller that is not a related party, as prescribed in Section 40-23-190(c), to a marketplace facilitator and that makes sales through any physical or electronic marketplaces operated by a marketplace facilitator.”

MN comment: Minnesota does not define this term. Rather, Minnesota law refers to retailers and describes retailers within the appropriate context. For example, a retailer that “made sales through one or more marketplace providers.” See, e.g., Minn. Stat. § 297A.66, subd. 2(b).

WA suggested language: A seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator, regardless of whether the seller is required to be registered . . . . (example from Washington definition in RCW 82.13.010(4)).

## **"Marketplace facilitator"**

1.\_\_\_\_Any person who (A) facilitates retail sales [insert state’s applicable sales volume threshold] by marketplace sellers by providing a [marketplace] that lists or advertises tangible personal property subject to tax . . . or taxable services, including digital goods, for sale by such marketplace sellers, (B) directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers, and (C) receives compensation or other consideration for such services. (narrow definition example from Connecticut)

KY comment: See suggested revision--Any person who (A) facilitates retail sales [insert state’s applicable sales volume threshold] by marketplace sellers by providing a [marketplace] that lists or advertises tangible personal property subject to tax . . . or taxable services, including digital goods, for sale by such marketplace sellers, (B) directly or indirectly through agreements or arrangements with third parties, collects

receipts from the customer and remits payments to the marketplace sellers, **or and (C)** receives compensation or other consideration for such services.

2.\_\_\_\_Any person that facilitates a sale for a marketplace seller through a marketplace by: (1) Offering for sale by the marketplace seller, by any means, tangible personal property, products transferred electronically, or services for delivery into this state; and (2) Directly, or indirectly through any agreement or arrangement with third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service. (narrow definition example from South Dakota; see Minnesota definition of “marketplace provider”)

MN comment: From Minn. Stat. § 297A.66, subd. 1(c):

(c) "Marketplace provider" means any person who facilitates a retail sale by a retailer by:

(1) listing or advertising for sale by the retailer in any forum, tangible personal property, services, or digital goods that are subject to tax under this chapter; and

(2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the retailer regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

3.\_\_\_\_A business that does the following three activities:

A. Facilitates the sale of a marketplace seller’s product through a marketplace for payment.

B. Engages, directly or indirectly, in **any** of the following with respect to bringing the buyer and seller together:

- Transmitting or otherwise communicating the offer or acceptance between the buyer and seller
- Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together
- Providing a virtual currency that buyers can use to purchase products from the seller

- Software development or research and development activities related to any activities with respect to the seller's products listed below, if such activities are directly related to a marketplace operated by the person or an affiliated person.

C. Does **any** of the following activities with respect to the seller's products:

- Payment processing services
- Fulfillment or storage services
- Listing products for sale
- Setting prices
- Branding sales as those of the marketplace facilitator
- Order taking
- Advertising or promotion
- Providing customer service or accepting or assisting with returns or exchanges

A marketplace facilitator facilitates sales of a seller's products through a marketplace and engages in other specified activities as provided by the law and outlined above. Websites that merely advertise goods for sale and do not handle transactions do not meet the definition of a marketplace facilitator.

(broad definition example from Washington; see also Iowa and Alabama definitions)

AL comment: Alabama variance Ala. Act 2018-539: "A person that contracts with marketplace sellers to facilitate for a consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a physical or electronic marketplace."

Because this definition is broad, there is the possibility that multiple parties to a transaction may fall under our definition of a marketplace facilitator. As a result, the department's proposed rule 810-6-2-.90.04 [Requirements for Certain Marketplace Facilitators and Marketplace Sellers](#) provides an ordering rule in these circumstances.

4.\_\_\_\_Other: [insert suggested language; if taken from existing statutory language, please provide the source]

GA suggested language: Any person who (A) facilitates retail sales of tangible personal property or taxable services by marketplace sellers on a marketplace by rendering services in connection with such sales or otherwise enhancing or enabling such sales for compensation, and (B) directly, or indirectly through agreements or arrangements

with third parties, collects receipts from the customer and remits payments to the marketplace sellers.

PA comment: Suggest consideration for a definition of a seller who sells independently into a state and not just in a marketplace/through a marketplace facilitator. Most states will want language like this to tie into any economic nexus language they may have. In PA's statute this term is 'remote seller.'